

0  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**CV 14**  
-----X

**0660**

MATTHEW HARPER,  
Plaintiff,

Civil Action No.

-Against-

**BRODIE, J.**

THE CITY OF NEW YORK and  
THE CITY OF NEW YORK DEPARTMENT  
OF CORRECTIONS; THE STATE OF NEW YORK;  
THE STATE OF NEW YORK DEPARTMENT OF  
CORRECTIONS; ULSTER CORRECTIONAL  
FACILITY; CORRECTIONS  
OFFICERS JOHN DOE and RICHARD ROE and  
SUPREME COURT, CRIMINAL TERM CLERK  
JOHN DOE/JANE DOE AND others whose True  
names and shield numbers are presently unknown.  
Defendants.

**COMPLAINT**

**GOLD, N. L.**

-----X

**PRELIMINARY STATEMENT**

1. This is a civil rights action in which the plaintiff, MATTHEW HARPER seeks relief for the defendants' violation of his rights secured by the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985, 1986, and the rights secured by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

2. The plaintiff seeks damages, compensatory and punitive, affirmative and equitable relief, an award of costs, interests and attorney's fees, and such other and further relief as this court deems equitable.

### **JURISDICTION**

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1343(3) and (4), this being an action seeking for the violation of plaintiff constitutional and civil rights.

4. Plaintiffs' claims for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

5. The plaintiff further invoke this Court's pendent jurisdiction, pursuant to 28 U.S.C. §1367 (a), over any and all state law claims and against all parties that are so related to the claims in this action within the original jurisdiction of this Court that they form part of the same case or controversy.

### **JURY TRIAL DEMANDED**

6. The plaintiff demands a trial by jury on each and every one of his claims as pleaded herein.

### **VENUE**

7. Venue is proper for the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1391 (a), (b), and (c).

### **THE PARTIES**

8. Plaintiff MATTHEW HARPER is a citizen of the United States who resided in Brooklyn, New York, at the time the events giving the rise to his claims occurred.

9. Defendant THE CITY OF NEW YORK DEPARTMENT OF CORRECTIONS is a municipal entity created and authorized under the laws of the State of New York. It is

authorized by law to maintain a department, which acts as its agent in the area of incarceration and corrections for which it is ultimately responsible. The defendant CITY OF NEW YORK assumes the risks incidental to the maintenance and employment of its staff as said risk attaches to the public consumers of the services provided by the DEPARTMENT.

10. Defendant STATE OF NEW YORK DEPARTMENT OF CORRECTIONS is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to carry out all incarceration and corrections functions for the defendant STATE OF NEW YORK and assumes the risks incidental to the maintenance of its staff and facilities.

11. At all times relevant herein, the corrections Officers named herein, (collectively “defendant officers”) and defendant CRIMINAL COURT CLERKS (Collectively “defendant clerks”) were acting under color of law in the course and scope of their duties and functions as agents, servants, employees and officers of the CITY OF NEW YORK DEPARTMENT OF CORRECTIONS, STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND STATE OF NEW YORK respectively and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the STATE OF NEW YORK DEPARTMENT OF CORRECTIONS and CITY OF NEW YORK DEPARTMENT OF CORRECTIONS and defendant STATE OF NEW YORK at all times relevant herein with the power and authority vested in them as officers, agents and employees THEREOF and incidental to the lawful pursuit of their duties as officers, employees and agents. Plaintiff is unable to determine the true names of said defendants “John Doe and Richard Roe” at this time and thus sue them under a fictitious designation. All of the defendants Officers and court clerks are sued individually and in their official capacities.

### **FACTUAL ALLEGATIONS**

12. Plaintiff was previously sentenced to an indeterminate sentence of 3 ½ to 7 years in New York State prison for attempted criminal possession of a controlled substance in the Third Degree and a determinate sentence of five (5) years for for Criminal Possession of a Weapon in the Third Degree (hereinafter “Plaintiff’s sentence). Plaintiff’s maximum expiration date was April 22, 2013. A copy of Petitioner’s legal date computation is annexed hereto as **exhibit A**.

13. While on parole, Plaintiff was arrested on October 3, 2012 and for and ultimately convicted of Criminal Possession of a Controlled Substance in the Seventh Degree (a misdemeanor). On January 11, 2013, Plaintiff was sentenced to 6 months in jail as a result of that conviction. This is the sentence at issue in the instant case.

14. Sentencing judge Raymond L. Bruce ordered that the sentence run concurrent with plaintiff’s previously imposed state sentence. That record is reflected clearly and plainly in the minutes of the Plaintiff’s sentencing proceedings. See minutes of sentencing proceedings annexed hereto as **exhibit B**.

15. Contrary to the judge’s order that the sentence be served concurrent with the state sentence, Plaintiff was forced to serve consecutive sentences. Plaintiff’s maximum expiration date was changed from April 22, 2013 to August 21, 2013. Plaintiff was forced to remain unjustly incarcerated for a period of four (4) months.

16. Throughout this incarceration, Plaintiff voiced his concerns and objections to his incarceration and demanded that the authorities contact the court to verify his contention that Judge Bruce had in fact ordered that the time run concurrently.

17. As a consequence of defendants's actions and inactions, Plaintiff was made to serve an additional and extra four (4) months in prison. That sentence was unjustified and not sanctioned by the court.

18. As a direct and proximate result defendants conduct, confinement and prosecution, plaintiff suffered loss of liberty.

**AS AND FOR A FIRST CLAIM OF RELIEF**

42 U.S.C. §§ 1983

(By Plaintiff Against All Defendants)

19. Plaintiff repeats and reallege paragraphs 1 through 18 as if fully set forth herein.

20. By incarcerating Plaintiff without cause, Defendants deprived Plaintiff of rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, and the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

21. The Defendants acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. Said acts or failures to act by the unknown Defendants were beyond the scope of their jurisdiction, without authority of the law, and in abuse of their powers, and said defendants acted or conspired to act, willfully, knowingly, and with the specific intent to deprive plaintiff of his constitutional rights secured by 42 U.S.C. § 1983, and by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

22. As a direct and proximate result of the misconduct and abuse of the authority detailed above, plaintiff sustained damages hereinbefore alleged.

**AS AND FOR A SECOND CLAIM FOR RELIEF**

42 U.S.C. § 1983

(By Plaintiff Against Defendant Officers)

23. Plaintiff repeats and realleges paragraphs 1 through 22 as if fully set forth herein.

23. By imprisoning Plaintiff without probable cause, the Defendants deprived Plaintiff of due process as guaranteed to all, in violation of 42 U.S.C. § 1983, and deprived Plaintiff of rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

24. The Defendant acted under pretense and color of state law and in their individual and official capacities and within scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted, or conspired to act, willfully knowingly and with the specific intent to deprive plaintiff of his constitutional rights secured by 42 U.S.C. § 1983, and by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

25. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiff sustained the damages hereinbefore alleged.

**AS AND FOR THIRD CLAIM FOR RELIEF**

False Arrest and False Imprisonment

LOSS OF LIBERTY

(By Plaintiff Against All Defendants)

26. Plaintiff repeats and re-alleges paragraph 1 through 25 as if the same were willfully set for that length herein.

27. The Defendants wrongfully and illegally detained and imprisoned plaintiff and allowed said incarceration to remain.

28. The wrongful, unjustifiable and unlawful detention and imprisonment were carried out without plaintiff's consent and without probable cause.

29. At all relevant times, the Defendant acted to deprive plaintiff of his liberty or with reckless disregard to that fact.

30. Throughout this period, plaintiff was unlawfully, wrongfully, and unjustifiably held, deprived of his liberty, imprisoned and falsely charged.

31. At all times mentioned, the unlawful, wrongful imprisonment of plaintiff was without right and without probable or reasonable cause.

32. All of the foregoing occurred without any fault or provocation on the part of plaintiff.

33. Defendants, their officers, agents, clerks, servants and employees were responsible for plaintiff's arrest, detention and imprisonment during this period of time. Defendant CITY AND STATE as employer of the DEFENDANT OFFICERS AND CLERKS , are responsible for their wrongdoing under the doctrine of *respondeat superior*.

34. The Defendant Officers and clerks acted, or conspired to act, with a knowing, willful, wanton, grossly, reckless, unlawful, unreasonable, unconscionable and flagrant disregard of plaintiff's rights, privileges, welfare, and well-being and were guilty or egregious and gross misconduct toward plaintiff. By imprisoning Plaintiff without probable cause, the Defendants deprived Plaintiff of rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, and deprived Plaintiff of rights guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

35. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiff sustained the damages hereinbefore alleged.

**AS AND FOR THE SIXTH CLAIM FOR RELIEF**

Negligence

(By Plaintiff Against Defendants CLERKS)

36. Plaintiff repeat and reallege paragraphs 1 through 35 as if the same were fully set forth at length herein.

37. Upon information and belief, defendant clerks owed a duty of care to plaintiff to prevent the mental abuse and loss of liberty sustained by plaintiff by properly documenting and communicating Judge Bruce concurrent sentence to defendants CITY OF NEW YORK DEPARTMENT OF CORRECTIONS, STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND STATE OF NEW YORK respectively. Defendant CLERKS failed to properly document and relay said concurrent sentence

38. Upon information and belief defendant CLERKS owed a duty of care to plaintiff because under the same or similar circumstances a reasonable, prudent and careful person should have anticipated that loss of liberty to plaintiff or to those in a like situation would probably result from this conduct.

39. Upon information and belief, the Defendant CLERKS were unfit and incompetent for their positions.

40. Upon information and belief, Defendants CITY OF NEW YORK DEPARTMENT OF CORRECTIONS, STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND STATE OF NEW YORK knew, or should have known through the exercise of reasonable diligence, that Plaintiff was being held without cause.

41. Upon information and belief, defendant STATE OF NEW YORK'S negligence in hiring and retaining the Defendant CLERKS proximately caused plaintiffs' loss of liberty.



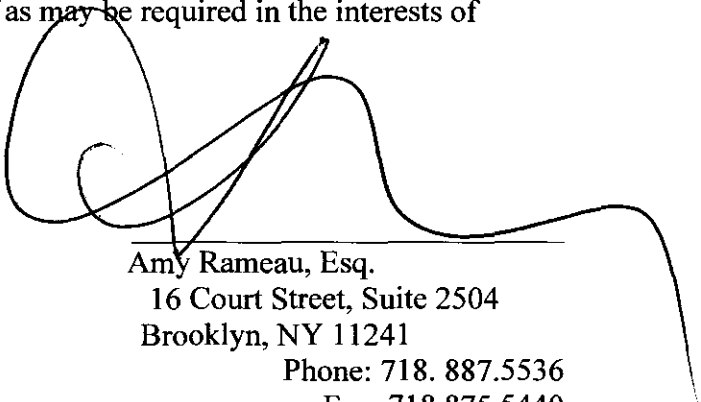
41. Upon information and belief, because of Defendants STATE OF NEW YORK's negligent hiring and retention of the aforementioned Defendant CLERKS, plaintiff incurred significant and lasting losses.

WHEREFORE, the plaintiff demands the following reliefs severally against all of the defendants:

- a. Compensatory damages in the amount of \$1,000,000.00;
- b. Punitive damages in the amount of \$1,000,000.00; and lost wages
- c. The convening and empanelling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable,

including injunctive and declaratory relief as may be required in the interests of justice.

DATED: Brooklyn, New York  
1/24/14



Amy Rameau, Esq.  
16 Court Street, Suite 2504  
Brooklyn, NY 11241  
Phone: 718. 887.5536  
Fax: 718.875.5440

**VERIFICATION**

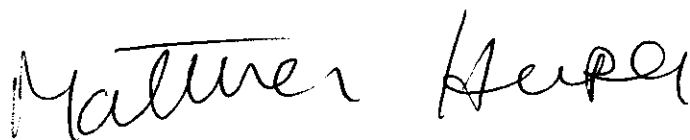
STATE OF NEW YORK )

ss..

COUNTY OF KINGS )

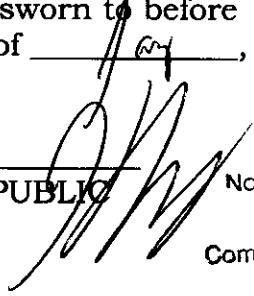
MATTHEW HARPER, being duly sworn, deposes and says:

That he is the Plaintiff herein; that he has read the foregoing complaint; that he knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

  
MATTHEW HARPER

Subscribed and sworn to before  
Me this 21 day of May, 2014

\_\_\_\_\_  
NOTARY PUBLIC

  
JOSEPH RUSSO  
Notary Public, State of New York  
No. 1234567  
City of New York, County  
Commission Expires March 15, 2015

04/23/13  
09:11:51

SRCL009

RECEPTION/CLASSIFICATION SYSTEM

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PAGE 001

CENTRAL DATE COMPUTATION

COMP DATE: 04/17/2013

BY: CCNSWXS

TYPE 90 (MANUAL COMPUTATION)

DIN: 01R0412 NAME: HARPER, MATTHEW

NYSID: 08839637Q

CURRENT LOCATION: ULSTER REC - 08-01-42T

DATE RECEIVED	2001 04 29		
MINIMUM TERM	004 03 10	TIME TO SERVE (MINIMUM)	003 08 28
MAXIMUM TERM	007 00 00	TIME TO SERVE (MAXIMUM)	006 05 18
JAIL TIME (DAYS)	0192	TIME OWED (MINIMUM)	000 09 01
DATE SENTENCED		TIME OWED (MAXIMUM)	000 06 21
ORIG. MAX. EXP. DATE	2013 04 22	PAROLE JAIL TIME (DAYS)	0072
DATE DECLARED DELINQUENT	2012 10 01	NET TIME OWED	000 04 09
DATE RETURNED	2013 04 12	LIMITED CREDIT TIME POSSIBLE	
ORIG. DATE RECEIVED		SUPPLEMENTAL MERIT TIME POSS.	
DATE RELEASED		MERIT TIME POSSIBLE	
DATE FAILED TO RETURN		GOOD TIME ADJUSTMENT	
DATE ESCAPED		GOOD TIME POSSIBLE	000 00 00
ORIG. PAR. ELIG. DATE		LIMITED CREDIT TIME DATE	
OTHER STATE SENT. DATE		SUPPLEMENTAL MERIT ELIG DT	
DATE DISCHARGED		MERIT ELIGIBILITY DATE	
DATE REAFFIRMED		PAROLE ELIGIBILITY DATE	2005 07 27
PRIOR TIME CREDIT		PAROLE HEARING DATE/TYPE	FMAX
HEPS		TENTATIVE RELEASE DATE	
PAROLE BOARD DISCHARGE		MAXIMUM EXPIRATION DATE	2013 08 21
PRS	PRS ME	CONDITIONAL RELEASE DATE	9999 99 99
		T.A.C. DATE/TYPE	9999 99 FMAX

REMARKS: RPV W/CS DET/INDET, PRSV, R/R, NO PRS, RPV2X, FIXED ME, RPV

DIST: IRC (1), GUID &amp; COUNS UNIT (1), INST PAROLE (1), INMATE (1)

1 CRIMINAL COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX: CRIMINAL TERM: PART FB

3 PEOPLE OF THE STATE OF NEW YORK,

4 - against -

DOCKET NO.  
2012BX057668

5 MATTHEW HARPER,

6 Defendant.

7 -----x  
8 265 East 161st Street  
9 Bronx, New York 10451  
January 11, 2013

10  
11 B E F O R E:

12 HONORABLE RAYMOND L. BRUCE,

13 Justice of the Supreme Court

14 A P P E A R A N C E S:

15  
16 ROBERT T. JOHNSON, ESQ.  
DISTRICT ATTORNEY, BRONX COUNTY  
17 BY: MIRIAM O'SULLIVAN, ESQ.  
Assistant District Attorney

18  
19 THE LEGAL AID SOCIETY  
Attorney for the Defendant  
20 260 East 161st Street  
Bronx, New York 10451  
21 BY: JEFFREY BLOOM, ESQ.

22 Nancy D. Grasso  
23 Official Court Reporter  
24  
25

1 THE COURT OFFICER: This is number 15 on the F.B.  
2 calendar, Matthew Harper. The defendant is charged with  
3 205.25 and other related charges.

4 Appearances.

5 MR. BLOOM: From the Office of Steven Banks by  
6 Jeffrey Bloom for Mr. Harper.

7 MS. O'SULLIVAN: Miriam O'Sullivan from the  
8 Office of Robert T. Johnson.

9 The People have an offer of a 220.03 and six  
10 months jail.

11 MR. BLOOM: My client is willing to accept that  
12 as long as it is running concurrent with the parole  
13 violation and time that he served.

14 THE COURT: Do you want to step up?

15 MR. BLOOM: Sure.

16 THE COURT: Off the record.

17 (OFF THE RECORD DISCUSSION AT THE BENCH)

18 THE COURT: Back on the record.

19 The People's application to dismiss the Felony  
20 Count is granted.

21 Do you want to enter the plea?

22 MR. BLOOM: Yes, Your Honor, at this time, my  
23 client has authorized me to withdraw his previously entered  
24 plea of not guilty and enter a plea of guilty to the Class  
25 A Misdemeanor pursuant to Penal Law §220.03. And that's

1 with the understanding that he will be sentenced to six  
2 months jail, which will run concurrent with parole time  
3 that he's serving in Richmond County, indictment 204 of  
4 2000.

5 THE COURT: Tony, can you swear the defendant in.

6 THE COURT CLERK: Mr. Matthew Harper?

7 MR. HARPER: Yes.

8 MATTHEW HARPER, a witness called on behalf of the  
9 Defendant after having been first duly sworn or affirmed  
10 and testified as follows:

11 THE COURT: Counsel, this is academic, but of  
12 course, how much time is remaining on the parole sentence?

13 MR. BLOOM: He gets out on parole on April 21st  
14 or 22nd, 2013.

15 THE COURT: And good time on six months would  
16 approach four months?

17 MR. BLOOM: In February, he would be done with  
18 this.

19 THE COURT: Thank you. So, you have explained to  
20 your client that he is not going to be be able to drive for  
21 six months?

22 MR. BLOOM: He understands that, Your Honor.

23 (QUESTIONS BY HONORABLE RAYMOND BRUCE OF  
24 DEFENDANT MATTHEW HARPER.)

25 Q. Mr. Harper, the gentleman standing to your left is

PROCEEDINGS

1 your attorney; is that correct?

2 A. Yes.

3 Q. And you are satisfied with your attorney's  
4 representation of you thus far?

5 A. Yes.

6 Q. You do understand that when you plead guilty, you  
7 waive your right to trial?

8 A. Yes.

9 Q. Those rights include the right to a jury trial, the  
10 right to challenge the evidence that the People would be using  
11 in order to make out a case against you?

12 A. Yes.

13 Q. One of the Notices that was served at the time, the  
14 Identification Notice. That means that somebody identified you  
15 as the individual who was in possession of the alleged drugs  
16 that you allegedly possessed.

17 When you plead guilty, you waive your right to  
18 challenge the identification. People say that they have a  
19 witness who saw you with possession of drugs; do you understand  
20 that?

21 A. Yes.

22 Q. So, you could challenge that identification of you as  
23 the individual who had these alleged drugs if you went to trial.  
24 By pleading guilty, you waive that constitutional right; do you  
25 understand that?

1 Q. Before you answer the next question, speak to your  
2 attorney. What was in each of the bags?

3 A. Crack cocaine, sir.

4 THE COURT: I'll accept your plea.

5 Do you waive preparation of the I.N.S. report?

6 MR. BLOOM: Yes, Your Honor. And stand ready for  
7 sentencing presently?

8 MR. BLOOM: Yes, Your Honor.

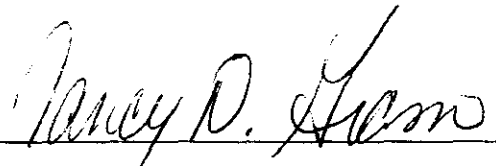
9 THE COURT: The sentence of this Court is six  
10 months jail, that is city time. That sentence will run  
11 concurrent with your current parole sentence, which is  
12 connected with indictment number 204 of 2000 in Richmond  
13 County.

14 Sentence is imposed. Take charge. Follow the  
15 directions of the officers.

16 THE COURT OFFICER: Step in.

17  
18 \* \* \* \* \*

19  
20 Certified to be a true and accurate record of the  
21 above proceedings.

22  
23 

24 Nancy D. Grasso  
25 Official Court Reporter



